

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**
(San Francisco)

Appellee.

) 9th Circuit Case No: 25-4348
) District Case No: 3:24-cv-09361-WHO
)
) **APPELLANT’S DESIGNATION OF**
) **RECORD AND STATEMENT OF ISSUES**
) **ON APPEAL**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Federal Rules of Appellate Procedure Rule 10 and Ninth Circuit Rule 10- 3.1(a), Appellant Adam Khimji hereby designates the following record on the instant Appeal:

District Court Docket No:	Date Entered on Docket	Brief Description
1	12/23/2024	Complaint <i>for Damages and Injunctive Relief</i> against Adam Khimji with jury demand
2	12/23/2024	Certificate of Interested Entities by Appellee <i>and FRCP 7.1 Disclosure Statement</i>
9	01/09/2025	WAIVER OF SERVICE Returned Executed filed by Appellee. Service waived by Appellant waiver sent on 12/30/2024, answer due 3/31/2025.
15 (Series)	03/31/2025	Notice of Motion and Motion to Dismiss and/or Stay in Favor of Arbitration (Attachments: 15-1 Declaration of Adam Khimji; 15-2 Declaration of Simon Lin)
16 (Series)	04/14/2025	Opposition to Docket 15 (Attachments: 16-1 Declaration of Akaash Gupta; 16-2 Declaration of Andrew M. Levad)
17 (Series)	04/21/2025	Reply in Support of Docket 15 (Attachments: 17-1 Supplemental Declaration of Simon Lin; 17-2 Declaration Supplemental Declaration)
18	04/23/2025	Notice of Errata by Appellant re: Docket #17
19	04/28/2025	Objections to Docket #17 Reply Evidence
26	06/03/2025	Order Granting Administrative Motion for Stay of Discovery
29	06/10/2025	Appellant's First Statement of Recent Decision
30	06/11/2025	Certificate of Interested Entities by Appellant

40	07/10/2025	Order Denying Docket #15 Motion to Dismiss or Stay
41	07/14/2025	Notice of Appeal from a Judgment or Order – Appeal of Docket #40
45	07/15/2025	Minute Order Denying Automatic Stay Pending Appeal

STATEMENT OF ISSUES ON APPEAL

Pursuant to Federal Rules of Appellate Procedure Rule 10 and Ninth Circuit Rule 10- 3.1(a), Appellants present the issues on appeal as follows:

1. The district court erred in finding no enforceable arbitration agreement.

The Appellee's Complaint admitted that its Terms of Use applied, and the arbitration agreement is found in those Terms of Use. Based on those admissions, it was not necessary for the district court to inquire on whether or not the Appellant was a signatory or non-signatory. Even as a non-signatory, the Appellant can enforce the arbitration agreement.

2. The district court further erred in not applying the delegation clause in the arbitration agreement, whereby the debate over arbitrability is to be decided by the arbitrator at first instance.

3. Assuming the district court could decide the issue of arbitrability, the district court further erred in finding that all of the claims raised in the Complaint were not arbitrable. Even if only *some* of the claims were arbitrable, the arbitration agreement requires that the arbitrator decides all issues of liability first and the action must still be stayed pending arbitration.

Date: July 28, 2025

By: Simon Lin

Simon Lin – State Bar No. 313661
4388 Still Creek Drive, Suite 237
Burnaby, BC, Canada V5C 6C6
T : 604-620-2666; F : 888-509-8168
E : simonlin@evolinklaw.com